NO. 44692-8-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

In re

TODD R. BROOKS,

Appellant,

and

ZEECHA L. BROOKS,

Respondent.

BRIEF OF RESPONDENT

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INTRODUCTION

This is a frivolous appeal. This Court has neither the time nor the resources to micromanage minute aspects of a visitation order, as the father demands. The only residential-schedule adjustment in these highly discretionary rulings is a reduction of roughly 2.5 days' worth of his visitation per year: Wednesday night visits the trial court found "too disruptive" to what little summer time mother and child have left after the father's thirty (30) summer overnights. This Court should award the mother appellate fees and costs under RAP 18.9 for responding to his frivolous appeal.

The father appeals only "the decision at trial December 10, 2012 regarding the Parenting Plan Final Order which was filed January 28, 2013." CP 297 (Amended Notice of Appeal). Nothing is attached to his Notice – *contra* RAP 5.3(a) – but at most, this is an appeal from the Final Order. Yet except for the 2.5 days noted above, the trial court simply left in place two prior orders (the 2010 Agreed Parenting Plan, and a 2011 Parenting Plan Temporary Order) neither of which the father challenges here. Since those orders are the law of the case, maintaining the status quo to ensure the child's stability cannot be an abuse of discretion.

This appeal is frivolous, and fees and costs are proper.

RESTATEMENT OF THE ISSUE

Where, as here, the father has not appealed from two pre-existing orders – one of which was an Agreed Parenting Plan – could the trial court possibly have abused its discretion by largely leaving those two orders in place, where its only adjustment to the residential schedule was to pause (only during the summer) the fathers' Wednesday-night, 2.5-hour visits, explaining that it agreed with the father that he should have thirty (30) summer overnights, but as a consequence, his mid-week visits would be "too disruptive" to what little summer vacation the mother and child had left?

Short Answer: No. This issue is not debatable, as reasonable minds could not differ on whether the trial court acted within its discretion under the controlling statutory exception, RCW 26.09.260(6), which expressly permits trial courts to adjust residential schedules without a showing of adequate cause. The father's appeal is thus so utterly devoid of merit that it lacks any reasonable possibility of reversal. This Court should award the mother fees and costs for responding to a frivolous appeal under RAP 18.9.

STATEMENT OF THE CASE

A. The father objected to the mother moving their child closer to him, while admitting that adequate cause is not required for an adjustment pursuant to a relocation.

The father goes on at length about the past history of this case, most of which is irrelevant to the issue on appeal. A salient fact here is that when the mother wanted to move closer to the father's home (to live with her new husband) the father objected and asked the court to "restrain" her from moving closer. CP 53-54. This is the only "novel" thing about this case – a father objecting to the mother bringing the child nearer and making visitation easier.

The father fails to note that when objecting to the move closer, he admitted that adequate cause is unnecessary:

> **3.2 Adequate Cause**
>
> The relocation of the child is being pursued. There is no need for adequate cause for hearing this petition for modification.

CP 54. This is a correct statement of the law (RCW 26.09.260(6)):

> Except as otherwise provided in . . . [subsection] (6) . . . the court shall not modify . . . a parenting plan unless it finds . . . that a substantial change has occurred . . . .
>
> **(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child**. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, . . . **without a showing**

> **of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued** . . . . [Emphases added.]

While the father dropped his attempt to restrain the move closer, the relocation was pursued and granted, so no adequate cause hearing was required under the plain language of this exception. The court was free to adjust the residential schedule.

The father's main allegation seems to be an inflammatory assertion that the mother proposed reducing his visitation by "30%" – which even he does not claim actually happened. BA 3-5. A mere proposal is immaterial, and his math is fuzzy in any event. *Id.* According to him, he had 120 overnights under the original Agreed Parenting Plan, when the parties both lived in Toutle, Washington. BA 3. When the mother moved away to Portland, he agreed to 108 overnights, including 16 "floating" overnights per school year, and 16 more per summer. BA 4. He thus agreed to a reduction of 12 overnights. *Id.* While all this irrelevant information may be true – and that is impossible to tell from the record – the father cites nothing that supports his specific assertions,[1] much less his math.

[1] Throughout his Statement of the Case, the father erroneously cites to Sub Numbers rather than CP numbers. But even ignoring these errors, the record still does not prove up his specific factual assertions.

B. The parties agreed that the trial court would address only a few highly discretionary issues.

The parties signed an agreed Joint Statement of Issues and gave it to the trial court (CP 139-40):

> 1. The parties are in agreement with the attached parenting plan[2] with the noted exceptions.
>
> 2. The Court will need to make determinations as to the following paragraphs in the parenting plan:
>
> 3.2(c) - Father's extra weekends;
>
> 3.2(e) - Wednesday visits during the summer;
>
> 3.5 - Summer Schedule; and
>
> 3.13(h) - Additional proposed language.[3]
>
> 3. The Court will need to make a determination as to fees and costs.
>
> 4. Argument in this matter shall be heard as scheduled on December 10, 2012.

On December 10, 2012, the trial court ruled on these discrete, highly discretionary issues. RP 51-60.

C. For the most part, the trial court left Judge Evan's pre-existing Temporary Order in place, and otherwise largely left the prior Agreed Parenting Plan in place.

Specifically, the trial court believed that for the stability of the child, it should largely follow the most recent existing order. RP 53.

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[2] This apparently refers to the Proposed Parenting Plan at CP 127-37.

[3] The father does not raise this issue or the trial court's denial of fees, so they will not be addressed further, leaving three discretionary rulings.

That was Judge Evan's Parenting Plan Temporary Order, dated November 9, 2012. *Id.*; CP 265-75. For issues not addressed there, the court generally followed the most recent Agreed Parenting Plan, dated December 15, 2010. RP 51-52. The father has not appealed from either of these prior orders. CP 180, 297.

On ¶ 3.2(c), Judge Evans gave the father four (rather than eight) additional weekends. CP 266 (*see* App. A, ¶ 3.2(c), interlineation). The trial court accepted that ruling. RP 54. **Change from the prior, unappealed order: 0 days**.

On ¶ 3.2(e), although Judge Evans ruled that alternating weekends should continue throughout the summer, he also interlineated: "This issue will be addressed at a future hearing and/or trial." CP 266. The trial judge allowed them. RP 55. **Change from the prior, unappealed order: 0 days.**

On ¶ 3.5, Judge Evans "RESERVED for further court order." CP 267. The trial court therefore again kept the 2010 Agreed Plan in place. RP 55. Under that plan, beginning in 2012, the father has thirty (30) summer overnights, plus all of his other visitation. CP 31. The trial court refused to give the mother any summer vacation time with her child. RP 59. **Change from the prior, unappealed order: 0 days.**

In addition to ruling on the issues the parties jointly raised, the trial court also ruled that ¶ 3.2(b) should be altered. RP 54. That paragraph said the child should reside with the father "[e]very Wednesday from 5:30 p.m. to 8:00 p.m." CP 266. The trial court instead limited the Wednesday visits to during the school year, not during the summer. RP 54. The court thus avoided disrupting what little summer time the mother has with her child (RP 57-58):

> I changed the Summer Wednesday visits because I am giving him thirty (30) – I'm continuing the thirty (30) day part of the Summer. I think, in addition to that, to have a Wednesday visit is simply too disruptive to what's left of the Summer that would be with the other parent.
>
> ...
>
> And, in fact . . . the Parenting Plan that we're looking at modifying doesn't specifically say that he has them. The parties agreed to that, for some reason.

Change from the prior, unappealed order: roughly **eight (8) 2.5 hour visits**, or about **2.5 days**.[4]

In sum, this is an appeal from a reasoned ruling that affects about 2.5 days' worth of visitation per year. Everything else was set in prior, unappealed orders. But even those unassailable orders were obviously reasonable. This appeal is frivolous.

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[4] This rough calculation assumes a three-month summer vacation. Under these rulings, the father gets one of those months. That leaves two months of Wednesday night visits, or roughly eight visits.

ARGUMENT

A. The standard of review is abuse of discretion. (BA 7)

The father concedes that the standard of review is abuse of discretion. BA 7. A trial court abuses its discretion only when its decision is manifestly unreasonable, based on untenable grounds, or made for untenable reasons. ***In re Marriage of Littlefield***, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). A decision is manifestly unreasonable only if it lies outside the range of acceptable choices in light of the facts and law. 133 Wn.2d 39 at 46-47. Reasons are untenable only if the court applies an incorrect legal standard or misapplies a correct legal standard. *Id.* at 47. Grounds are untenable only when the challenged findings are unsupported. *Id.*[5]

That is, trial courts have broad discretion in matters concerning the welfare of children. *See, e.g.*, ***In re Marriage of Cabalquinto***, 100 Wn.2d 325, 327, 669 P.2d 886 (1983). Yet the father nowhere asserts that the trial court's findings are unsupported, that its rulings are beyond the pale, or that he made a legal error. He just wants this Court to tinker around with visitation.

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[5] Here, the father assigns no error to any findings, so they are verities. *See, e.g.*, ***Humphrey Indus., Ltd. v. Clay St. Assocs.***, 176 Wn.2d 662, 675, 295 P.3d 231 (2013) (citing ***Davis v. Dep't of Labor & Indus.***, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980)).

B. This is not a "case of first impression," but this is a frivolous appeal. (BA 7-8)

Telegraphing that he knows his appeal is frivolous, the father goes out of his way to argue that this is a "case of first impression," arguing that such cases "are not frivolous." BA 7-8. True, the trial judge did say that he thought this was a case of first impression. RP 51-52, 57. But in fact and at law it is not.

"Case of first impression" is a legal term of art, meaning:

> *case of first impression.* (1806) A case that presents the court with [1] **an issue of law** that has not previously been decided [2] **by any controlling legal authority in that jurisdiction**. [Bold emphasis added.]

BLACK'S LAW DICTIONARY 243 (9th Ed. 2009). Odd facts a case of first impression do not make. Otherwise – the variety of human experience being what it is – virtually every case would be "of first impression." While it is admittedly unusual for a father to seek to "restrain" the mother from moving the child closer to him, he gave that up, so it is not a legal issue before this Court.

Rather, the legal issue here is whether the trial court abused its discretion (a) by adjusting the residential schedule for a stated tenable reason, as authorized by statute; or (b) by maintaining the status quo of pre-existing, unchallenged orders, fostering the child's stability. There is nothing new or debatable about either issue.

And even if one took an unreasonably broad view of the legal issues, this still is not a case of first impression because the issue is directly answered by controlling law in this jurisdiction – the relevant plain language of the RCW 26.09.260(6) exception:

> Except as otherwise provided in . . . [subsection] (6) . . . the court shall not modify . . . a parenting plan unless it finds . . . that a substantial change has occurred . . . .
>
> (6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child.
>
> The person objecting . . . may file a petition to modify the parenting plan . . . without a showing of adequate cause other than the proposed relocation itself.
>
> A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued.

A trial court indisputably may adjust the residential schedule where, as here, a relocation is pursued, under this controlling authority.

Thus, this is not a case of first impression, but a baseless claim of abuse of discretion lacking any supporting legal authority, simply because the father disagrees with the way the trial court exercised its discretion. In other words, his appeal is frivolous:

> An appeal is frivolous when there are no debatable issues upon which reasonable minds could differ and when the appeal is so totally devoid of merit that there was no reasonable possibility of reversal.

Mahoney v. Shinpoch, 107 Wn.2d 679, 691, 732 P.2d 510 (1987) (citing ***Boyles v. Dep't of Ret, Sys.***, 105 Wn.2d 499, 509, 716 P.2d 869 (1986); *see* RAP 18.9(a)). In determining whether an appeal is frivolous, this Court follows five rules:

> (1) A civil appellant has a right to appeal under RAP 2.2;
>
> (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant;
>
> (3) the record should be considered as a whole;
>
> (4) an appeal that is affirmed simply because the arguments are rejected is not frivolous;
>
> (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.

Streater v. White, 26 Wn. App. 430, 434-435, 613 P.2d 187 (1980) (citing Jordan, *Imposition of Terms and Compensatory Damages in Frivolous Appeals*, Wash. St. B. News, May 1980, at 46).

A similarly frivolous appeal occurred in ***Chapman v. Perera***, 41 Wn. App. 444, 455-56, 704 P.2d 1224.(1985), a child custody battle. There, as here, the appeal came down to alleged abuses of discretion. Reviewing the entire record, and resolving all doubts in the appellant's favor, the Court nonetheless found the appeal frivolous. This Court should do the same here.

Indeed, even assuming that the trial court were correct that this is a "case of first impression" – which it is not – the father's appeal is still frivolous. He quotes the rule on cases of first impression, yet fails to apply it, at BA 8 (citation forms corrected):

> "Cases of first impression are not frivolous if they present debatable issues of substantial public importance." ***Olson v. City of Bellevue***, 93 Wn. App. 154, 165-66, 968 P.2d 894 (1998), *rev. denied*, 137 Wn.2d 1034 (1999) (*quoting* ***Cary v. Allstate Ins. Co.***, 78 Wn. App. 434, 440-41, 897 P.2d 409 (1985), *aff'd*, 130 Wn.2d 335, 922 P.2d 1335 (1996)).

The father nowhere addresses the second part of the test: <u>if they present debatable issues of substantial public importance</u>.

This appeal does not come close to meeting that test. Rather, it is easily disposed of simply by following the plain language of an existing statute that the father acknowledges, but refuses to follow. There is nothing debatable or important about his minor dispute over a few days' worth of visitation per year. And the father has no legal authority for his position. He just disagrees with the trial court's exercise of its discretion. That is the essence of a frivolous appeal.[6]

This Court should so hold.

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[6] *See, e.g.*, WASHINGTON APPELLATE PRACTICE DESKBOOK, § 26.3(1) at 26-7 ("Examples of frivolous appeals include: Appeal of purely discretionary rulings simply because the appellant disagrees with them, without making a debatable showing of abuse of discretion" (citing ***Johnson v. Jones***, 91 Wn. App. 127, 955 P.2d 826 (1998))).

C. Relocations permit adjustments. (BA 8-10)

The father states that "relocations do not automatically give rise to a modification of a parenting plan." BA 8 (title case omitted). Taken literally, this is true: a court does not "automatically" (or *sua sponte*) modify a parenting plan every time relocation is requested. Sometimes relocations are denied. Other times, a relocation may not require a modification.

But if the father means to suggest that a trial court cannot adjust the residential schedule for stated, proper reasons, even though a relocation is being pursued, his argument again flies in the face of the relevant language in the RCW 26.09.260(6) exception:

> The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child.
>
> The person objecting . . . may file a petition to modify the parenting plan . . . without a showing of adequate cause other than the proposed relocation itself.
>
> A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued.

Under the relevant language of this exception, "a proceeding to permit or restrain a relocation" is all that is required for the court to "order adjustments to the residential schedule." Adequate cause is irrelevant. No abuse of discretion occurred here.

The father talks about other irrelevant statutes, mostly having to do with "in district" or "out of district" moves, and substantial changes in circumstances. BA 8-10. The plain language quoted above says nothing about "districts," nor does it require a substantial change. Pursuant to this unambiguous exception, the court made "adjustments to the residential schedule" for sound reasons. Nothing in any statute barred the trial court from making a very slight adjustment to the father's visitation to ensure fairness in the Agreed Parenting Plan it entered. The father's demand for unfairness is frivolous.

D. No substantial change in circumstances is required. (BA 10-13).

The father argues that, "if a relocation does not result in a substantial change of circumstances no modification is permissible." BA 10 (title case omitted). But again, the controlling exception says exactly the opposite (RCW 26.09.260(6)):

> The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child.
>
> The person objecting . . . may file a petition to modify the parenting plan . . . without a showing of adequate cause other than the proposed relocation itself.
>
> A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued.

Amazingly, the father actually quotes a portion of this admitted exception to RCW 26.09.260, while arguing that the statute still requires a substantial change! BA 11 (quoting RCW 26.09.260(6)). His reasoning is elusive. Directly contrary to his page 10 heading quoted above, he admits that subsection (6) "waives the issue of adequate cause if a relocation is pursued." *Id.* That is correct, and it is dispositive of this frivolous appeal.

But he nonetheless goes on to say, "but the analysis does not and should not end there," because the court "may make modifications *pursuant to the* relocation." *Id.* (italics *sic*). Allegedly, this "places a significant burden on the parent requesting the change to show that that [*sic*] some practical change to the current parenting plan is necessitated by the relocation of the child." *Id.*

For this, the father cites only "*Id.*", which apparently refers back to subsection (6). *Id.* But § .260(1) applies, "[e]xcept as otherwise provided in . . . (6)," and § (6) says nothing about a "significant burden" or a "practical change"; rather, it says:

> A hearing to determine adequate cause for modification **shall not be required** so long as the request for relocation of the child is being pursued.

RCW 26.09.260(6) (emphasis added). The Legislature does not even require an adequate cause hearing. There is no burden here.

The father also cites a slew of irrelevant statutes regarding substantial changes, and major or minor modifications. BA 11-13. None of these statutes applies because – as the father admits – subsection (6) excepts relocations from them. Similarly, he wastes more words on what the mother allegedly "attempted" to do, without addressing what the court actually did. BA 12. This red herring does not render his appeal any less frivolous.

Finally, he again attempts to make "pursuant to" carry the water for his entire frivolous appeal. BA 13. But contrary to his repeated assertions, subsection (6) does not say that the mother's request must be "pursuant to" the relocation, but rather that the trial "court may order adjustments to the residential aspects of a parenting plan **pursuant to a proceeding** to permit or restrain a relocation of the child." RCW 26.09.260(6) (emphasis added). In plain English, "pursuant to" means, "in the course of carrying out." WEBSTERS THIRD NEW INT'L DICT. 1848 (1993). Thus, under subsection (6), the trial court may make adjustments to the residential schedule in the course of carrying out a relocation.

The father's appeal was rendered frivolous by the plain language of this controlling legal authority. It remains so.

E. The trial court specifically "maintained the continuity" of the existing parenting plan. (BA 13-14)

The father correctly notes that **custodial changes** are viewed as highly disruptive and that "frequent changes" in parenting plans are disfavored. BA 13-14. But this case does not involve a custodial or frequent change, so the cases he cites are irrelevant. Again, his argument is frivolous.

Indeed, the trial court expressly ruled that it was maintaining the existing orders to maintain the child's stability. RP 53. And it made a minor residential-schedule adjustment expressly because the existing mid-week summer visits would be "too disruptive." RP 57-58. The trial judge was completely focused on this child's stability. It is the father who has lost sight of it.

F. This Court should deny the father's completely unsupported fee request, and grant the mother fees for a frivolous appeal under RAP 18.9. (BA 14-15)

The father asks for fees under RCW 26.09.140. That statute is expressly based upon need and ability to pay. The father does not even attempt to argue his need or the mother's ability to pay. Neither exists. His overreaching request is frivolous.

"The rules of appellate procedure permit an award of attorney fees to a prevailing respondent in a frivolous appeal." ***Mahoney***, 107 Wn.2d at 691 (citing ***Boyles***, 105 Wn.2d at 508-09;

RAP 18.9(a)). As explained above, the issue here is not debatable, in that reasonable minds could not differ on whether the trial judge properly exercised his discretion. The father's appeal is thus utterly devoid of merit, and no reasonable possibility of reversal exists.

This Court should award the mother fees and costs under RAP 18.9 ("The appellate court . . . may order a party . . . who . . . files a frivolous appeal . . . to pay terms . . . to any other party . . .").

CONCLUSION

For the reasons stated, this Court should summarily affirm – without hearing argument – and award the mother fees and costs under RAP 18.9.

RESPECTFULLY SUBMITTED this 16th day of September 2013.

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CERTIFICATE OF SERVICE BY MAIL

I certify that I caused to be mailed, a copy of the foregoing **BRIEF OF RESPONDENT** postage prepaid, via U.S. mail on the 10th day of September 2013, to the following counsel of record at the following addresses:

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RCW 26.09.140

Payment of costs, attorneys' fees, etc.

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.

The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name.

[2011 c 336 § 690; 1973 1st ex.s. c 157 § 14.]

RCW 26.09.260

Modification of parenting plan or custody decree.

(1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the

residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the nonresidential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.

(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party.

[2009 c 502 § 3; 2000 c 21 § 19; 1999 c 174 § 1; 1991 c 367 § 9. Prior: 1989 c 375 § 14; 1989 c 318 § 3; 1987 c 460 § 19; 1973 1st ex.s. c 157 § 26.]

RULE 18.9
VIOLATION OF RULES

(a) Sanctions. The appellate court on its own initiative or on motion of a party may order a party or counsel, or a court reporter or other authorized person preparing a verbatim report of proceedings, who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court. The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. If an award is not paid within the time specified by the court, the appellate court will transmit the award to the superior court of the county where the case arose and direct the entry of a judgment in accordance with the award.

(b) Dismissal on Motion of Commissioner or Clerk. The commissioner or clerk, on 10 days' notice to the parties, may (1) dismiss a review proceeding as provided in section (a) and (2) except as provided in rule 18.8(b), will dismiss a review proceeding for failure to timely file a notice of appeal, a notice for discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review. A party may object to the ruling of the commissioner or clerk only as provided in rule 17.7.

(c) Dismissal on Motion of Party. The appellate court will, on motion of a party, dismiss review of a case (1) for want of prosecution if the party seeking review has abandoned the review, or (2) if the application for review is frivolous, moot, or solely for the purpose of delay, or (3) except as provided in rule 18.8(b), for failure to timely file a notice of appeal, a notice of discretionary review, a motion for discretionary review of a decision of the Court of Appeals, or a petition for review.

(d) Objection to Ruling. A counsel upon whom sanctions have been imposed or a party may object to the ruling of a commissioner or the clerk only as provided in rule 17.7.

MASTERS LAW GROUP

September 16, 2013 - 2:54 PM

Transmittal Letter

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Case Name: Brooks and Brooks

Court of Appeals Case Number: 44692-8

Is this a Personal Restraint Petition? Yes ■ No

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Answer/Reply to Motion: ____

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Statement of Additional Authorities

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Letter

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Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

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Petition for Review (PRV)

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Comments:

No Comments were entered.

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